

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

ANTHONY JOSEPH PASCUZZI,

Petitioner,

v.

JEFFREY A. UTTECHT,

Respondent.

Case No. 3:18-cv-05299-RJB-TLF

REPORT AND
RECOMMENDATION DENYING
PLAINTIFF'S APPLICATION TO
PROCEED *IN FORMA PAUPERIS*

Noted for May 18, 2018

This case has been referred to Magistrate Judge Theresa L. Fricke pursuant to 28 U.S.C. § 636(b)(1) and Local Rule MJR 3 and 4. This matter comes before the Court on petitioner's filing of an application to proceed *in forma pauperis*. (Dkt. 3) Because petitioner's application indicates he has sufficient income with which to pay the \$5.00 filing fee, the undersigned recommends that the Court deny the application.

DISCUSSION

The district court may permit indigent litigants to proceed *in forma pauperis* upon completion of a proper affidavit of indigency. 28 U.S.C. § 1915(a). However, the Court has broad discretion in denying an application to proceed *in forma pauperis*. *Weller v. Dickson*, 314 F.2d 598 (9th Cir. 1963).

By requesting the court to proceed *in forma pauperis*, petitioner is asking the government to incur the filing fee because he allegedly is unable to afford the costs necessary to proceed with his cause of action. Petitioner's prison trust account statement indicates he has average monthly

1 receipts of \$71.87 and an average spendable balance of \$29.32. Dkt. 3, p. 3. Given that the filing
2 fee for *habeas corpus* petitions is \$5.00, petitioner appears to have sufficient funds in his prison
3 trust account to pay that fee.

4 CONCLUSION

5 Because it is reasonable for petitioner to incur the costs to proceed with his petition, the
6 undersigned recommends that the court deny his application to proceed *in forma pauperis*.

7 Accordingly, the undersigned also recommends that the Court order petitioner to pay the filing
8 fee **within thirty (30) days** of the Court's order.

9 The parties have **fourteen (14) days** from service of this Report and Recommendation to
10 file written objections thereto. 28 U.S.C. § 636(b)(1); Federal Rule of Civil Procedure (FRCP)
11 72(b); *see also* FRC P 6. Failure to file objections will result in a waiver of those objections for
12 purposes of appeal. *Thomas v. Arn*, 474 U.S. 140 (1985). Accommodating the time limit imposed
13 by Fed. R. Civ. P. 72(b), the Clerk is directed set this matter for consideration on **May 18, 2018**,
14 as noted in the caption.

15 Dated this 30th day of April, 2018.

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Theresa L. Fricke
19 United States Magistrate Judge
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